

Docket 5



Federal Communications Commission
Washington, D.C. 20554

JUN 2 1997

The Honorable Don Nickles
United States Senator
409 South Boston, Suite 3310
Tulsa, Oklahoma 74103-4007

Dear Senator Nickles:

Thank you for your letter of April 16, 1997, on behalf of your constituent, Mark S. Swanson, regarding the Commission's policies with regard to licensing of 931 MHz paging systems. Mr. Swanson expresses concern that his paging application will be dismissed and that paging frequencies will be awarded in a competitive bidding process.

On February 20, 1997, the Commission released a Second Report and Order and Further Notice of Proposed Rule Making in WT Docket 96-18/and PP Docket 93-253, which adopted rules governing geographic area licensing for Private Carrier and Common Carrier paging licenses and established competitive bidding procedures for those systems. For your convenience and information, enclosed is a copy of the Press Release concerning the Second Report and Order and Further Notice of Proposed Rule Making, which includes a summary of the principal decisions made. Specifically, all mutually exclusive applications for non-nationwide Common Carrier Paging licenses and exclusive non-nationwide Private Carrier Paging channels will be subject to competitive bidding procedures. Additionally, all pending mutually exclusive applications filed with the Commission on or before February 20, 1997, will be dismissed.

The Commission's interim paging freeze did not require prior issuance of a Notice of Proposed Rule Making. Indeed, the Commission has imposed freezes in a number of other proceedings to facilitate the transition to geographic licensing and auctions, including Multipoint Distribution Service, 800 and 900 MHz Specialized Mobile Radio (SMR) Service, Location and Monitoring Service, 220 MHz Service and 39 GHz Service. Our decision in these proceedings to suspend acceptance of applications while the related rulemaking was pending advances two critical goals -- preservation of our ability to assign licenses through auctions, and deterrence of license fraud and speculation. In particular, we are concerned that the potential benefits of geographic area licensing, with competitive bidding used to select from among competing applicants, would be undermined by continuing to invite site-specific applications for "free" spectrum on a first-come, first-served basis.

Assigning frequencies by auction, in turn, helps deter fraud and speculation and ensures that this valuable public resource is assigned rapidly and efficiently to the parties who value it the most, rather than given away to the first party who files its application with the Commission. The Commission has stated its belief in other contexts (such as Specialized

Mobile Radio) that auctions will minimize administrative or judicial delays in licensing, particularly in comparison to other licensing methods such as comparative hearings, lotteries (which are specifically prohibited by the statute if the service is auctionable), or "first-come, first-served" procedures.

The Commission's newly adopted rules to auction paging frequencies is consistent with Section 309(j) of the Communications Act, which sets forth certain criteria for determining when auctions should be used to award spectrum licenses. Pursuant to these criteria, auctions are to be used to award mutually exclusive initial licenses or construction permits for services likely to involve the licensee receiving compensation from subscribers. The statute also requires that the Commission determine that auctioning the spectrum will further the public interest objectives of Section 309(j)(3) by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging efficient spectrum use.

Moreover, the Commission has taken a number of steps to ensure that paging providers that are small businesses are not adversely affected by the transition to geographic area licensing and the use of competitive bidding procedures to award paging licenses. Additionally, the Part 90 shared paging channels will not be auctioned; instead they will be licensed on a site-by-site basis. We are establishing licensing areas of a size that will provide realistic bidding opportunities for small and medium-sized operators. We have also adopted special provisions in our competitive bidding rules for small businesses to facilitate their participation in the auction process, including bidding credits and installment payment provisions. In the Further Notice of Proposed Rule Making, we have proposed to allow paging licensees to partition their licensing areas in order to promote quicker build-out of small markets and rural areas.

Mr. Swanson may be a victim of a fraudulent paging application investment scheme rather than an actual paging operator. The Commission, the United States Securities and Exchange Commission and the Federal Trade Commission are investigating fraudulent investment schemes involving paging and other wireless services. Generally, the fraud perpetrators contact potential investors and represent that paging licenses have a great value that can be recouped through subsequent sale. These consumer fraud victims may be unaware of the obligations with which licensees must comply. Unfortunately, the fraud victim is often targeted a second time by different fraud perpetrators offering to construct the paging system. The FCC Call Center, 1-888-CALL- FCC (225-5322), will forward data from telemarketing fraud victims to the National Fraud Information Center where it is made available to law enforcement personnel on a nationwide basis. We strongly recommend that Mr. Swanson

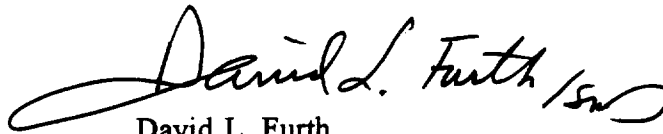
The Honorable Don Nickles

3.

call the FCC Call Center and provide the Call Center representative with information pertaining to the paging application investment. Additionally, Mr. Swanson may also wish to promptly contact his State Commission, State Attorney General or the National Fraud center directly at 1-800-876-7060.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, reading "David L. Furth" with a stylized flourish at the end.

David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

Enclosure

CONGRESSIONAL
referral to headquarters

*P.L.B.
paging*

3092

DATE: April 22, 1997

TO: Samantha Peoples, Mail Stop 1500

FM: Dallas, Texas

Member of Congress: Senator Don Nickles

Subject: Paging License Application

The attached correspondence raises policy issues which are so novel that the field does not have current information and cannot obtain a Commission policy statement or response to these issues is expressly reserved for CIB headquarters or another bureau.

James D. Wells
James D. Wells

District Director

Date recd by OBC 4/30/97

Date dlvr'd to OLA 4/30/97

Initials: *Sp.*



FEDERAL COMMUNICATIONS COMMISSION
COMPLIANCE & INFORMATION BUREAU

April 22, 1997

Reply To:

9330 LBJ Freeway, Suite 1170
Dallas, Texas 75243
(214) 235-3369
CD-97-30

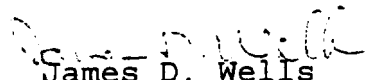
Honorable Don Nickles
United States Senate
409 South Boston, Suite 3310
Tulsa, OK 74103-4007

Dear Senator Nickles:

Thank you for contacting our office on behalf of your constituent, Mark S. Swanson, of Tulsa, Oklahoma.

Your inquiry is being forwarded to the Chief of the Compliance and Information Bureau for coordination with the appropriate staff at our headquarters office in Washington, D.C.

Sincerely,


James D. Wells
District Director

:ew

DON NICKLES
OKLAHOMA

United States Senate
WASHINGTON, DC 20510-3602

COMMITTEES
FINANCE
ENERGY AND NATURAL
RESOURCES
BUDGET
GOVERNMENTAL AFFAIRS
RULES AND ADMINISTRATION

April 16, 1997

RECEIVED
APR 21 1997
F.C.C. Dallas

Sandra Morris, Congressional Liaison
Federal Communication Commission
9330 LBJ Freeway, Suite 1170
Dallas, Texas 75243

Dear Sandra:

Attached is a letter from one of my constituents concerning a situation in which I believe you can be of assistance.

I would appreciate your looking into this matter for me. In responding to me, please direct your correspondence to the attention of my representative:

Julie Clardy, Constituent Representative
409 South Boston, Suite 3310
Tulsa, Ok 74103-4007

Thank you very much for your cooperation.

Sincerely,



DON NICKLES
U.S. SENATOR

DN/jc
enc

19 MARCH 97

6115 S. 72nd E. Ave.
Tulsa, OK 74133

Mr. Don Nickles
U. S. Senator
409 S. Boston
Tulsa, OK 74103

Dear Mr. Nickles:

I am currently an applicant for a 931 MHz paging license in the Indianapolis, IN market, which application is currently pending before the Federal Communications Commission(FCC). I am writing to urge you to insist that the FCC reverse its February 24, 1997 decision in WT Docket No. 96-18 looking to dismiss my pending application and issue 931 MHz paging licenses in my market solely by auctions in the future.

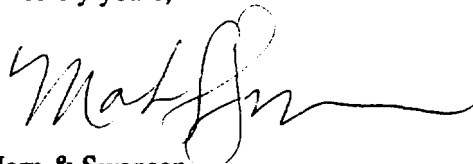
I paid thousands of dollars for application preparation and filing services and properly filed my application in accordance with the FCC Rules and policies then in effect at the time of filing. The fact that the FCC now wants to change its rules, dismiss my application and hold an auction means that the substantial amount of money I invested in this project will be lost. Neither I nor many other similarly situation applicants who properly filed in good faith have the resources to bid hundreds of thousands of dollars to win an auction license for an entire, big as a state-sized MTA geographic area, as proposed by the FCC.

I will have no opportunity to obtain an FCC license, build a paging station and participate in the communications industry as I hoped to do, and which Congress has committed to seeing happen. I will lose all of my substantial investment to date because the FCC wants to arbitrarily change its Rules after I filed my application. This retroactive action by this Federal agency is not fair, and should not be condoned by Congress. Congress has oversight of this Federal agency and the FCC should be held accountable.

I urge you to conduct an inquiry and take appropriate action on behalf of your constituents and have the FCC correct its action before it is too late. All I am asking is equitable treatment, which in this case could include "grandfathering" of mine and similar applications by the FCC, and appropriate processing and grant of these applications. Such would not interfere with future auctions, as planned by the FCC.

Thank you for your prompt evaluation and intervention on my behalf.

Sincerely yours,



Horn & Swanson
Mark S. Swanson